

REMARKS

This responds to the final Office Action dated 12 December 2007. Claims 1-43 are presently pending in the application, each of which Applicant believes is in condition for allowance. Applicant respectfully requests reexamination and reconsideration in light of the following remarks.

Interview Summary

Applicant thanks the Examiner for the courtesies extended in the telephonic interview conducted 4 February 2008. In this interview, Applicant and the Examiner discussed whether the prior art of record teaches that a file system may be backed up to or restored from a “locally-stored image file [that] is [located] within the same partition” as the file system, as is required by certain claims of the instant application. Applicant and the Examiner also discussed whether the prior of record teaches of “creat[ing] [or building] a new directory area for [a] partition using [a] directory map” of the locally-stored image,” as is recited in certain claims of the instant application. No agreement was reached.

Claim Rejections – 35 U.S.C. § 103

In the Action, the Examiner rejected claims 1-5, 9-15, 19-25, 31-35, and 39-43 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2004/0083245 to Beeler (“Beeler”) in view of U.S. Patent Publication No. 2002/0087588 to McBride et al. (“McBride”), claims 6-8, 16, 17, 26-30, 36, and 37 as allegedly being unpatentable over Beeler in view of McBride and further in view of U.S. Patent Publication No. 2003/00221076 to Milligan et al. (“Milligan”), and claims

18 and 38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Beeler in view of McBride and further in view of U.S. Patent Publication No. 2002/0095616 to Hastings ("Hastings"). Applicant respectfully traverses these rejections.

Claims 1-10, 21-30, and 32-42

Independent claims 1, 41, and 42 each recite, *inter alia*, "copying each allocation unit occupied by a plurality of files of the file system to a locally-stored image file . . . [that is] located within the same partition as the file system being backed up." Similarly, independent claim 21 recites an apparatus for backing up a file system comprising, *inter alia*, "a local imager to copy each allocation unit occupied by a plurality of files of the file system to a locally-stored image file . . . [that is] located within the same partition as the file system being backed up." Independent claims 1, 21, 41, and 42 also recite, *inter alia*, "a directory map . . . that associates copied allocation units in the locally-stored image file with names of corresponding files from the file system."

In contrast, Beeler and McBride, either alone or in combination, fail to disclose, teach, or suggest backing up or restoring a file system to or from a "locally-stored image file [that] is located within the same partition as the file system." For example, while Beeler may teach of replicating and locally storing primary data 62 in FIG. 6 as replicated data 63 in server 61, Beeler fails to state whether replicated data 63 is located within the same partition as primary data 62. Indeed, even though Beeler teaches that primary data 62 and replicated data 63 may be stored within "different volumes of the same data storage device," Beeler fails to explicitly state that these "different volumes" are necessarily located within the same partition. Par. [0079] of Beeler. In fact, as is

well known in the art, volumes, or logical drives, are commonly stored within different partitions, even within a single storage device. The following table provides a common example in a WINDOWS system environment of such a configuration:

TABLE 1

Storage Device	Partition	File System Format	Volume Label
Hard Disk A	Partition A	NTFS	C:
Hard Disk A	Partition B	FAT32	D:

As such, while primary data 62 and replicated data 63 in Beeler may be stored within the same storage device (such as Hard Disk A in Table 1), these volumes may be stored within different partitions (such as Partitions A and B in Table 1) within this storage device.

According to the Federal Circuit, for a rejection to be proper, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) (emphasis added). In this case, the Beeler reference fails to state that primary data 62 and replicated data 63 are located within the same partition, as is required by the claims. Moreover, while Beeler may teach that primary data 62 and replicated data 63 may be stored within “different volumes of the same data storage device,” these volumes may likely (as explained above) be located within different partitions within the storage device. As such, the Beeler reference obviously fails to disclose, teach, or suggest this limitation, even inherently. See, e.g., *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference,

and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”) (emphasis added); *accord*. MPEP 2112.

McBride fails to remedy the deficiencies of Beeler. For example, while McBride may teach of a “local backup data storage location . . . [that] may be a hard drive in the host computer or in a computer networked to the host computer,” McBride fails to contain any disclosure, teaching, or suggestion of a locally-stored image file located within the same partition as a file system to be backed up or restored, as is required by the claims of the present application. *See* Par. [0016].

The figures and text of McBride also clearly teach away from backing up or restoring a file system to or from a locally-stored image file located within the same partition as the file system. For example, as illustrated in FIG. 24 below, McBride explicitly teaches of backing up data from a first storage device (source 551) to a second backup storage device (destination 552) that is different from, and located within a different partition as, the first storage device. As seen in this figure, source 551 (“C:\My Documents”) is located on a client’s hard drive, while the destination 552 (“Web Drive”) for the backup is located within an entirely different partition on an entirely different device and machine (web server).

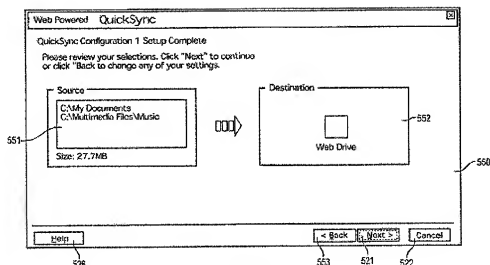


FIG. 24

Beeler and McBride also clearly fail to disclose, teach, or suggest “a directory map . . . that associates copied allocation units in the locally-stored image file with names of corresponding files from the file system, as is recited in independent claims 1, 21, 41, and 42. For example, while Beeler may teach of copying “all of the volumes, directories, and files specified in [a] replication set” from a “source server 61 to [a] target server 93,” this reference fails to explicitly teach of adding a directory map to a locally-stored image file, much less a locally-stored image that is “located within the same partition as the file system being backed up,” as is recited in the present application. *See, e.g.*, par. [0091] of Beeler. Beeler also fails to disclose a directory map that “associates copied allocation units in the locally-stored image file with names of corresponding files from the file system,” as is recited in independent claims 1, 21, 41, and 42. The Examiner has also failed to point to any portion of McBride that satisfies these limitations.

Accordingly, because Beeler and McBride, either alone or in combination, fail to disclose, teach or suggest each and every limitation of independent claims 1, 11, 21, 31,

and 41-43, a *prima facie* case of obviousness has not been established. See, e.g., *In re Royka*, 490 F.2d 981, 985 (CCPA 1974) (holding that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art) (emphasis added); *accord*. MPEP § 2143.03 (“To establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.”) (emphasis added). Applicant therefore respectfully requests withdrawal of this rejection.

Moreover, aside from the novel limitations recited therein, claims 2-10, 12-20, 22-30, and 32-40 are also allowable at least by virtue of their dependency upon allowable base claims 1 and 21. Applicant respectfully requests, therefore, the withdrawal of the rejection of claims 1-10, 21-30, and 32-42.

Claims 11-20, 31, and 43

Independent claims 11 and 43 each recite a method for restoring a file system comprising, *inter alia*, “access[ing] a locally-stored image file located within the partition to which the file system is to be restored.” Similarly, independent claim 31 recites an apparatus for restoring a file system comprising, *inter alia*, “an image locator to find a locally-stored image file located within the partition to which the file system is to be restored.” As detailed above in connection with 1-10, 21-30, and 32-42, Beeler and McBride, either alone or in combination, fail to disclose, teach, or suggest accessing or restoring a locally-stored image file that is located within the partition to which the file system is to be restored, as is recited in these claims.

Independent claims 11, 31, and 43 also recite, *inter alia*, a “locally-stored image file comprising a directory map” and “creat[ing] [or building] a new directory area for

the partition using the directory map" of the locally-stored image. Beeler and McBride, in contrast, clearly fail to disclose, teach, or suggest these limitations.

For example, while Beeler may teach of copying "all of the volumes, directories, and files specified in [a] replication set" from a "source server 61 to [a] target server 93," this reference fails to explicitly teach of a locally-stored image file that comprises a directory map, much less a locally-stored image that is "located within the same partition as the file system being backed up," as is recited in the present application. *See, e.g.*, par. [0091] of Beeler. Moreover, while Beeler arguably teaches of "creating a directory," this reference clearly fails to disclose, teach, or suggest "creat[ing] [or building] a new directory area for the partition using [a] directory map" of the locally-stored image. The Examiner has failed to point to any portion of McBride that satisfies any of these limitations.

Accordingly, because Beeler and McBride, either alone or in combination, fail to disclose, teach or suggest each and every limitation of independent claims 1, 20, 31, and 43, a *prima facie* case of obviousness has not been established. Moreover, aside from the novel limitations recited therein, claims 12-20 are also allowable at least by virtue of their dependency upon allowable base claim 11. Applicant respectfully requests, therefore, that the rejection of claims 11-20, 31, and 43 under 35 U.S.C. § 103 be withdrawn.

Conclusion

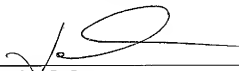
For at least the foregoing reasons, Applicant believes that each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicant respectfully requests a favorable action on the merits. If the Examiner has any further comments or suggestions, Applicant invites the Examiner to contact the undersigned attorney to expedite the handling of this matter.

Applicant expressly disclaims all arguments, representations, and/or amendments presented or contained in any other patent or patent application, including any patents or patent applications claimed for priority purposes by the present application or any patents or patent applications that claim priority to this patent application. Moreover, all arguments, representations, and/or amendments presented or contained in the present patent application are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application.

Respectfully submitted,

Date:

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